

back to the U.S. in the form of imports—for example, component parts shipped to Mexico for assembly into finished goods and infrastructure equipment for use in the building of factories.

And then there's the small matter of the wages of American workers. In Nafta's first year, before the collapse of the peso, America's 77 million production workers endured a 3 percent drop in their real hourly wages—the steepest one-year decline ever recorded.

That, of course, was directly related to the overall expansion of the labor pool under Nafta, and the fact that the number of companies choosing to relocate to Mexico has, as expected, accelerated. The chilling effect of these developments on wage demands should be obvious.

The peso devaluation has dried up the consumer market in Mexico. That simply means that as bad as Nafta was originally, Mexicans are now even less able to buy American goods.

But it was Nafta that put us on this highway to nowhere in the first place. The collapse of the peso just increased the speed.●

#### SUPPORT OF THE LOW-INCOME HOUSING CREDIT

● Mr. MOYNIHAN. Mr. President, I rise today to express my great dismay at a proposal passed this week by the House Ways and Means Committee to repeal the low-income housing tax credit.

The housing credit is the Federal Government's principal and most successful affordable housing program. The Enterprise Foundation estimates that the housing credit is responsible for almost all of the new private construction of housing units for lower income renters, and that almost 800,000 units of rental housing for lower income working families and the elderly have been constructed or rehabilitated as a result of the housing credit. They also report that the 106,000 affordable housing units generated with the housing credit in 1993 resulted in the creation of approximately 90,000 jobs, \$2.8 billion in wages, and \$1.3 billion in additional tax revenues.

I have visited many of the projects in New York that have been made possible by the housing credit, and I can assure you the credit is having a dramatic effect on the availability of good, affordable housing. Yet now some of our colleagues in the House would repeal it. I do not understand what their reasoning is.

The House Ways and Means Committee proposal would sunset the credit at the end of 1997. The committee acted without holding any hearings to review the housing credit. And while the committee calls on the Government Accounting Office to review the management and operation of the housing credit, it acts nonetheless.

The housing credit was devised by the Senate Finance Committee during consideration of the Tax Reform Act of 1986, and was signed into law by President Reagan. It has enjoyed solid bipartisan support for nearly a decade.

I was pleased in 1993, as Chairman of the Senate Finance Committee, to bring legislation before the Senate which permanently extended the hous-

ing credit. That legislation was enacted as the Omnibus Budget Reconciliation Act of 1993. We were able to permanently extend the housing credit in a bill which produced the largest amount of deficit reduction in this country's history. The Office of Management and Budget estimates that the direct and indirect effects of the bill were to reduce the baseline deficit by a cumulative amount of one trillion dollars. In sum, while making a very significant attack on the deficit, we were still able to find the resources for this important national priority. And yet just 2 years later we see an effort to repeal it. This is an odd development, indeed, and I urge my colleagues to join me in opposing it.●

#### UNANIMOUS-CONSENT AGREEMENTS

Mr. BENNETT. Mr. President, I ask unanimous consent that at 9:30 a.m. on Friday the Senate proceed to the conference report to accompany H.R. 1817, the military construction appropriations bill, and it be considered under the following time agreement: 20 minutes equally divided between Senators BURNS and REID, or their designee; 10 minutes under the control of Senator BINGAMAN; and, 20 minutes under the control of Senator MCCAIN.

I further ask that, following the conclusion or yielding back of time, the Senate proceed to a vote on the adoption of the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Senate considers the conference report to accompany H.R. 1854, the legislative appropriations bill, that it be considered under the following time agreement: 30 minutes to be equally divided between Senators MACK and MURRAY; and 10 minutes under the control of Senator SIMON.

I further ask that, following the conclusion or yielding back of time, the Senate proceed to vote on the adoption of the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I ask unanimous consent that, immediately following the disposition of the military construction appropriations conference report on Friday, the Senate proceed to Calendar No. 188, S. 1244, the District of Columbia appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MERCURY-CONTAINING BATTERY MANAGEMENT

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 1882, S. 619.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 619) to phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and certain other batteries, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 619

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Mercury-Containing and Rechargeable Battery Management Act".

#### SEC. 2. FINDINGS.

*The Congress finds that—*

(1) it is in the public interest to—

(A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

#### SEC. 3. DEFINITIONS.

*[In] For purposes of this Act:*

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) BUTTON CELL.—The term "button cell" means a button- or coin-shaped battery.

(3) EASILY REMOVABLE.—The term "easily removable", with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) MERCURIC-OXIDE BATTERY.—The term "mercuric-oxide battery" means a battery that uses a mercuric-oxide electrode.

(5) RECHARGEABLE BATTERY.—The term "rechargeable battery"—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 103, means the battery pack as a whole rather than each component individually); but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) **RECHARGEABLE CONSUMER PRODUCT.**—The term “rechargeable consumer product”—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) **REGULATED BATTERY.**—The term “regulated battery” means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 103(d).

(8) **REMANUFACTURED PRODUCT.**—The term “remanufactured product” means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

#### SEC. 4. INFORMATION DISSEMINATION.

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

#### SEC. 5. ENFORCEMENT.

(a) **CIVIL PENALTY.**—When on the basis of any information the Administrator determines that a person has violated or is in violation of any requirement of this Act, the Administrator—

(1) in the case of a willful violation, may issue an order assessing a civil penalty of not more than \$10,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation, may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(b) **CONTENTS OF ORDER.**—An order under subsection (a)(1) shall state with reasonable specificity the nature of the violation.

(c) **CONSIDERATIONS.**—In assessing a civil penalty under subsection (a)(1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) **FINALITY OF ORDER; REQUEST FOR HEARING.**—An order under subsection (a)(1) shall become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) **HEARING.**—On receiving a request under subsection (d), the Administrator shall promptly conduct a hearing on the record.

(f) **SUBPOENA POWER.**—In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) **CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.**—If a violator fails to take corrective action within the time specified in an order under subsection (a)(1), the Administrator may assess a civil penalty of not more than \$10,000 for the continued noncompliance with the order.

(h) **SAVINGS PROVISIONS.**—The Administrator may not take any enforcement action against a person for selling, offering for sale, or offering for promotional purposes to the final consumer a battery or product governed by this Act that was—

(1) purchased ready for final sale; and

(2) sold, offered for sale, or offered for promotional purposes without modification.

#### SEC. 6. INFORMATION GATHERING AND ACCESS.

(a) **RECORDS AND REPORTS.**—A person who is required to carry out the objectives of this Act, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

(4) an authorized agent of a person described in [subparagraph (A), (B), or (C)] paragraph (1), (2), or (3),

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this Act.

(b) **ACCESS AND COPYING.**—The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a).

(c) **CONFIDENTIALITY.**—The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

#### SEC. 7. STATE AUTHORITY.

Except as provided in sections 103(e) and 104, nothing in this Act shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this Act.

#### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

### TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

#### SEC. 101. SHORT TITLE.

This title may be cited as the “Rechargeable Battery Recycling Act”.

#### SEC. 102. PURPOSE.

The purpose of this title is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

#### SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LABELING.

(a) **PROHIBITION.**—

(1) **IN GENERAL.**—No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, [which] if the battery or product was manufactured on or after the date that is 12 months after the date of enactment of this Act[, unless—

[(A) in the case of a regulated battery, the regulated battery—

[(i) is easily removable from the rechargeable consumer product; or

[(ii) is sold separately; and

[(B) in the case of a regulated battery or rechargeable consumer product, the labeling requirements of subsection (b) are met.]

unless the labeling requirements of subsection (b) are met and, in the case of a regulated battery, the regulated battery—

(A) is easily removable from the rechargeable consumer product; or

(B) is sold separately.

(2) **APPLICATION.**—Paragraph (1) does not apply to [a sale of] any of the following:

(A) The sale of a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured[; or].

(B) The sale of a product unit intended for export purposes only.

(b) **LABELING.**—Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall [be labeled with—] bear the following labels:

(1)[(A)] 3 chasing arrows or a comparable recycling symbol[;].

[(B)(i) on each nickel-cadmium battery, the chemical name or the abbreviation “Ni-Cd”; and

[(ii) on each lead-acid battery, “Pb” or the words “LEAD”, “RETURN”, and “RECYCLE”];

[(C) on each nickel-cadmium regulated battery, the phrase “BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.”; and

[(D) on each sealed lead acid regulated battery, the phrase “BATTERY MUST BE RECYCLED.”];

(2)(A) On each regulated battery that is a nickel-cadmium battery, the chemical name or the abbreviation “Ni-Cd” and the phrase “BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.”.

(B) On each regulated battery that is a lead-acid battery, “Pb” or the words “LEAD”, “RETURN”, and “RECYCLE” and if the regulated battery is sealed, the phrase “BATTERY MUST BE RECYCLED.”.

[(2) on] (3) On each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable[; and].

[(3) on] (4) On the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(c) **EXISTING OR ALTERNATIVE LABELING.**—

(1) **INITIAL PERIOD.**—For a period of 2 years after the date of enactment of this Act, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with

subsection (b) shall be deemed to comply with the labeling requirements of subsection (b).

(2) CERTIFICATION.—

(A) IN GENERAL.—On application by persons subject to the labeling requirements of subsection (b) or the labeling requirements promulgated by the Administrator under subsection (d), the Administrator shall certify that a different label meets the requirements of subsection (b) or (d), respectively, if the different label—

(i) conveys the same information as the label required under subsection (b) or (d), respectively; or

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this title.

(B) CONSTRUCTIVE CERTIFICATION.—Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A) (i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this Act.

(d) RULEMAKING AUTHORITY OF THE ADMINISTRATOR.—

(1) IN GENERAL.—If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) SUBSTANTIAL SIMILARITY.—The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b).

(e) UNIFORMITY.—After the effective dates of a requirement set forth in subsection (a), (b), or (c) or a regulation promulgated by the Administrator under subsection (d), no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) EXEMPTIONS.—

(1) IN GENERAL.—With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) GRANTING OF EXEMPTION.—Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall

grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) RENEWAL OF EXEMPTION.—A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

#### SEC. 104. REQUIREMENTS.

For the purposes of carrying out the collection, storage, transportation, and recycling or proper disposal of used rechargeable batteries, batteries described in section [3(3)(C)] 3(5)(C) or in title II, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, persons involved in collecting, storing, or transporting such batteries or products to a facility for recycling or proper disposal shall, notwithstanding any other law, be regulated in the same manner and with the same limitations as if the persons were collecting, storing, or transporting [batteries subject to subpart G of part 266 of title 40, Code of Federal Regulations, as in effect on January 1, 1993, except that sections 264.76, 265.76, and 268.7 of that title shall not apply] *spent lead acid batteries that are recyclable materials subject to regulations of the Environmental Protection Agency under subpart G of part 266 of title 40, Code of Federal Regulations, as in effect on January 1, 1995, except that the requirements of title 40 relating to unmanifested waste reports (40 CFR 264.76 and 265.76) and to waste analysis and recordkeeping (40 CFR 268.7) shall not apply.*

#### SEC. 105. COOPERATIVE EFFORTS.

Notwithstanding any other law, if 2 or more persons who participate in projects or programs to collect and properly manage used rechargeable batteries or products powered by rechargeable batteries advise the Administrator of their intent, the persons may agree to develop jointly, or to share in the costs of participating in, such a project or program and to examine and rely on such cost information as is collected during the project or program.

### TITLE II—MERCURY-CONTAINING BATTERY MANAGEMENT ACT

#### SEC. 201. SHORT TITLE.

This title may be cited as the “Mercury-Containing Battery Management Act”.

#### SEC. 202. PURPOSE.

The purpose of this title is to phase out the use of batteries containing mercury.

#### SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MANGANESE BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

#### SEC. 204. LIMITATIONS ON THE SALE OF ZINC-CARBON BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after January 1, 1996, that contains mercury that was intentionally introduced as described in section 203.

#### SEC. 205. LIMITATIONS ON THE SALE OF BUTTON CELL MERCURIC-OXIDE BATTERIES.

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after January 1, 1996.

#### SEC. 206. LIMITATIONS ON THE SALE OF OTHER MERCURIC-OXIDE BATTERIES.

(a) PROHIBITION.—On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery for use in the United States unless the battery manufacturer—

(1) identifies a collection site that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) APPLICATION OF SECTION.—This section does not apply to a sale or offer of a mercuric-oxide button cell battery.

#### SEC. 207. NEW PRODUCT OR USE.

On petition of a person that proposes a new use for a battery technology described in this title or the use of a battery described in this title in a new product, the Administrator may exempt from this title the new use of the technology or the use of such a battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6291 et seq.))

Mr. SMITH. Mr. President, today the Senate is considering S. 619, the Mercury-Containing and Rechargeable Battery Management Act. I introduced this measure on March 24, 1995, along with Senators LAUTENBERG, FAIRCLOTH, MCCONNELL, LIEBERMAN, SIMON, MACK, BOND, GRAHAM, WARNER, and REID as original cosponsors. In addition, Senator INHOFE and Senator SNOWE cosponsored the bill following its introduction. This legislation is urgently needed to remove Federal barriers detrimental to much-needed State and local recycling programs for batteries commonly found in cordless products such as portable telephones, laptop computers, tools, and toys. In order to respond to this urgent need, the Senate Committee on Environment and Public Works reported S. 619 out of the committee, by voice vote, on August 2, 1995.

Since 1992, Federal battery legislation has been approved in various congressional forums, including full Senate passage in 1994, but it did not become law because the legislation that it was attached to did not move forward. S. 619 which is virtually identical

to the Senate passed provisions last year, would: First, facilitate the efficient and cost effective collection and recycling or proper disposal of used nickel cadmium [Ni-Cd] and certain other batteries by: (a) Establishing a coherent national system of labeling for batteries and products; (b) streamlining the regulatory requirements for battery collection programs for regulated batteries; and (c) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries; and second, phase out the use of mercury in batteries.

I am pleased to report that the U.S. Conference of Mayors, at its June meeting, passed a resolution in support of S. 619. As the resolution recognized, passage of this legislation will decrease the quantities of mercury and cadmium contributed to the environment by dry cell batteries. In addition, S. 619 will facilitate implementation of State battery laws in the 13 States that have enacted such provisions. These States are New Hampshire, Rhode Island, New Jersey, California, Connecticut, Florida, New York, Iowa, Oregon, Maine, Vermont, Minnesota, and Maryland. The bill also will assist all other States in moving forward with an industry financed and developed national battery collection program.

Mr. President, although industry has developed a national collection program to comply with these laws, without enactment of a Federal bill, EPA's current regulatory requirements preclude industry from fully implementing this program and from complying with the State collection requirements. Regulatory changes currently under consideration, even if promulgated, will not provide the necessary solution. Additional lengthy rulemaking procedures would also be necessary to make the regulation operational on a national basis. Further, we would still lack a coherent national system of labeling, which is necessary to facilitate nationwide marketing of batteries and products while advancing a national battery collection program. Federal legislation is the only real solution to removing the barriers to complying with State battery recycling laws, and to achieving a comprehensive recycling program.

The prompt passage of this bipartisan legislation will achieve a number of important goals. First, by establishing uniform national standards to promote the recycling and reuse of rechargeable batteries, this legislation provides a cost effective means to promote the reuse of our Nation's resources. Second, our bill will further strengthen efforts to remove these potentially toxic heavy metals from our Nation's landfills and incinerators. Not only will this lower the threat of groundwater contamination and toxic air emissions, but it will also significantly reduce the threat that these materials pose to the environment.

Third, this legislation represents an environmentally friendly policy choice that was developed as the result of a strong cooperative effort between the States, environmental groups and the affected industries. Our bill is strongly supported by the Electronic Industries Association [EIA], the Portable Rechargeable Battery Association [PRBA], and the National Electrical Manufacturers Association [NEMA]. For all of the reasons cited above, I believe that this legislation provides a substantial win-win from both an environmental as well as an economic standpoint.

Mr. President, I believe this bill represents a significant and positive step in removing potentially toxic heavy metals from our Nation's solid waste stream, and I urge its immediate adoption.

Mr. LAUTENBERG. Mr. President, I rise to join Senator CHAFEE and Senator SMITH in supporting S. 619, the Mercury-Containing and Rechargeable Battery Management Act.

The bill is based on the bipartisan bill that I sponsored with Senators FAIRCLOTH, LIEBERMAN, REID and GRAHAM during the last Congress.

Mr. President, this legislation is an important step in our efforts to control the amount of toxic wastes entering the waste stream. Specifically it deals with mercury, cadmium and lead which are contained in some battery casing. These materials pose no risk while a battery is in use. But they can be a significant concern when discarded in our solid waste stream.

Cadmium, which is used in the electrodes of rechargeable nickel-cadmium batteries, can cause kidney and liver damage.

Mercury exposure can cause significant damage to the nervous system and kidneys. It has also been linked to decreased motor functions and muscle reflexes, memory loss, headaches and brain function disorders. And when mercury enters the aquatic environment, it can form methyl mercury, which is extremely toxic to both humans and wildlife.

Although dry cell batteries account for less than one tenth of 1 percent of the 180 billion tons of garbage we generate each year, dry cell batteries have been significant sources of mercury, cadmium, and lead in our waste stream.

According to a New York State report, mercury batteries accounted for 85 percent of the mercury, and rechargeable batteries accounted for 68 percent of the cadmium, in New York's solid waste.

In landfills, dry cell batteries can break down to release their toxic contents and contaminate our waters. In incinerators, the combustion of dry cell batteries containing toxic metals leads to elevated toxic air emissions, and has increased the concentrations of toxic metals in the resulting fly and bottom ash.

This bill, by limiting the amount of toxics used in primary batteries and

creating a recycling program for rechargeable nickel cadmium, will remove a significant source of toxics from our landfills.

Besides widespread bipartisan support, this bill is supported by the Portable Rechargeable Battery Association, and the National Electrical Manufacturers Association. I urge speedy approval of this measure.

Mr. BENNETT. I ask unanimous consent that the committee amendments be adopted, the bill then be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 619) was deemed to have been read three times and passed.

S. 619

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Mercury-Containing and Rechargeable Battery Management Act".

#### SEC. 2. FINDINGS.

The Congress finds that—

(1) it is in the public interest to—

(A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

#### SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) BUTTON CELL.—The term "button cell" means a button- or coin-shaped battery.

(3) EASILY REMOVABLE.—The term "easily removable", with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) MERCURIC-OXIDE BATTERY.—The term "mercuric-oxide battery" means a battery that uses a mercuric-oxide electrode.

(5) RECHARGEABLE BATTERY.—The term "rechargeable battery"—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of

easy removability and labeling under section 103, means the battery pack as a whole rather than each component individually; but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) **RECHARGEABLE CONSUMER PRODUCT.**—The term “rechargeable consumer product”—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) **REGULATED BATTERY.**—The term “regulated battery” means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 103(d).

(8) **REMANUFACTURED PRODUCT.**—The term “remanufactured product” means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

#### SEC. 4. INFORMATION DISSEMINATION.

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

#### SEC. 5. ENFORCEMENT.

(a) **CIVIL PENALTY.**—When on the basis of any information the Administrator determines that a person has violated or is in violation of any requirement of this Act, the Administrator—

(1) in the case of a willful violation, may issue an order assessing a civil penalty of not more than \$10,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation, may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(b) **CONTENTS OF ORDER.**—An order under subsection (a)(1) shall state with reasonable specificity the nature of the violation.

(c) **CONSIDERATIONS.**—In assessing a civil penalty under subsection (a)(1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) **FINALITY OF ORDER; REQUEST FOR HEARING.**—An order under subsection (a)(1) shall

become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) **HEARING.**—On receiving a request under subsection (d), the Administrator shall promptly conduct a hearing on the record.

(f) **SUBPOENA POWER.**—In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) **CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.**—If a violator fails to take corrective action within the time specified in an order under subsection (a)(1), the Administrator may assess a civil penalty of not more than \$10,000 for the continued noncompliance with the order.

(h) **SAVINGS PROVISIONS.**—The Administrator may not take any enforcement action against a person for selling, offering for sale, or offering for promotional purposes to the final consumer a battery or product governed by this Act that was—

(1) purchased ready for final sale; and

(2) sold, offered for sale, or offered for promotional purposes without modification.

#### SEC. 6. INFORMATION GATHERING AND ACCESS.

(a) **RECORDS AND REPORTS.**—A person who is required to carry out the objectives of this Act, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

(4) an authorized agent of a person described in paragraph (1), (2), or (3), shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this Act.

(b) **ACCESS AND COPYING.**—The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a).

(c) **CONFIDENTIALITY.**—The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

#### SEC. 7. STATE AUTHORITY.

Except as provided in sections 103(e) and 104, nothing in this Act shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this Act.

#### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

### TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

#### SEC. 101. SHORT TITLE.

This title may be cited as the “Rechargeable Battery Recycling Act”.

#### SEC. 102. PURPOSE.

The purpose of this title is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

#### SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LABELING.

(a) **PROHIBITION.**—

(1) **IN GENERAL.**—No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, if the battery or product was manufactured on or after the date that is 12 months after the date of enactment of this Act, unless the labeling requirements of subsection (b) are met and, in the case of a regulated battery, the regulated battery—

(A) is easily removable from the rechargeable consumer product; or

(B) is sold separately.

(2) **APPLICATION.**—Paragraph (1) does not apply to any of the following:

(A) The sale of a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured.

(B) The sale of a product unit intended for export purposes only.

(b) **LABELING.**—Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall bear the following labels:

(1) 3 chasing arrows or a comparable recycling symbol.

(2)(A) On each regulated battery that is a nickel-cadmium battery, the chemical name or the abbreviation “Ni-Cd” and the phrase “BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.”.

(B) On each regulated battery that is a lead-acid battery, “Pb” or the words “LEAD”, “RETURN”, and “RECYCLE” and if the regulated battery is sealed, the phrase “BATTERY MUST BE RECYCLED.”.

(3) On each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(4) On the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(c) **EXISTING OR ALTERNATIVE LABELING.**—

(1) **INITIAL PERIOD.**—For a period of 2 years after the date of enactment of this Act, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) shall be deemed to comply with the labeling requirements of subsection (b).

(2) **CERTIFICATION.**—

(A) **IN GENERAL.**—On application by persons subject to the labeling requirements of subsection (b) or the labeling requirements promulgated by the Administrator under subsection (d), the Administrator shall certify that a different label meets the requirements of subsection (b) or (d), respectively, if the different label—

(i) conveys the same information as the label required under subsection (b) or (d), respectively; or

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this title.

(B) **CONSTRUCTIVE CERTIFICATION.**—Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A) (i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this Act.

(d) **RULEMAKING AUTHORITY OF THE ADMINISTRATOR.**—

(1) **IN GENERAL.**—If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) **SUBSTANTIAL SIMILARITY.**—The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b).

(e) **UNIFORMITY.**—After the effective dates of a requirement set forth in subsection (a), (b), or (c) or a regulation promulgated by the Administrator under subsection (d), no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) **EXEMPTIONS.**—

(1) **IN GENERAL.**—With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) **GRANTING OF EXEMPTION.**—Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) **RENEWAL OF EXEMPTION.**—A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The

Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

#### **SEC. 104. REQUIREMENTS.**

For the purposes of carrying out the collection, storage, transportation, and recycling or proper disposal of used rechargeable batteries, batteries described in section 3(5)(C) or in title II, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, persons involved in collecting, storing, or transporting such batteries or products to a facility for recycling or proper disposal shall, notwithstanding any other law, be regulated in the same manner and with the same limitations as if the persons were collecting, storing, or transporting spent lead acid batteries that are recyclable materials subject to regulations of the Environmental Protection Agency under subpart G of part 266 of title 40, Code of Federal Regulations, as in effect on January 1, 1995, except that the requirements of title 40 relating to unmanifested waste reports (40 CFR 264.76 and 265.76) and to waste analysis and recordkeeping (40 CFR 268.7) shall not apply.

#### **SEC. 105. COOPERATIVE EFFORTS.**

Notwithstanding any other law, if 2 or more persons who participate in projects or programs to collect and properly manage used rechargeable batteries or products powered by rechargeable batteries advise the Administrator of their intent, the persons may agree to develop jointly, or to share in the costs of participating in, such a project or program and to examine and rely on such cost information as is collected during the project or program.

### **TITLE II—MERCURY-CONTAINING BATTERY MANAGEMENT ACT**

#### **SEC. 201. SHORT TITLE.**

This title may be cited as the "Mercury-Containing Battery Management Act".

#### **SEC. 202. PURPOSE.**

The purpose of this title is to phase out the use of batteries containing mercury.

#### **SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MANGANESE BATTERIES CONTAINING MERCURY.**

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

#### **SEC. 204. LIMITATIONS ON THE SALE OF ZINC-CARBON BATTERIES CONTAINING MERCURY.**

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after January 1, 1996, that contains mercury that was intentionally introduced as described in section 203.

#### **SEC. 205. LIMITATIONS ON THE SALE OF BUTTON CELL MERCURIC-OXIDE BATTERIES.**

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after January 1, 1996.

#### **SEC. 206. LIMITATIONS ON THE SALE OF OTHER MERCURIC-OXIDE BATTERIES.**

(a) **PROHIBITION.**—On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery for use in the United States unless the battery manufacturer—

(1) identifies a collection site that has all required Federal, State, and local govern-

ment approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) **APPLICATION OF SECTION.**—This section does not apply to a sale or offer of a mercuric-oxide button cell battery.

#### **SEC. 207. NEW PRODUCT OR USE.**

On petition of a person that proposes a new use for a battery technology described in this title or the use of a battery described in this title in a new product, the Administrator may exempt from this title the new use of the technology or the use of such a battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6291 et seq.)).

### **ORDERS FOR FRIDAY, SEPTEMBER 22, 1995**

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Friday, September 22, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to the consideration of the military construction appropriations conference report as under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

### **PROGRAM**

Mr. BENNETT. Mr. President, for the information of all Senators, the Senate will consider and complete action on several items on Friday. At 9:30, the Senate will begin consideration of the MilCon appropriations conference report under a short agreement. Senators can expect a rollcall vote on that conference report possibly before 10:30 tomorrow.

The Senate will also complete action on the legislative appropriations conference report on Friday. The Senate will also consider the D.C. appropriations bill. Senators can therefore expect rollcall votes throughout tomorrow's session of the Senate.

### **ORDER FOR RECESS**

Mr. BENNETT. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in recess under the previous order following the remarks of Senator PELL.

The PRESIDING OFFICER. Without objection, it is so ordered.